

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MILTON WAYNE PERRY,

Plaintiff,

v.

KATHY HONTON,

Defendant,

Civil Action No. 05-71977-DT
HONORABLE PAUL D. BORMAN
UNITED STATES DISTRICT COURT

**ORDER DENYING PETITIONER'S MOTION FOR CERTIFICATE OF
APPEALABILITY**

Petitioner filed a Motion for Certificate of Appealability pursuant to 28 U.S.C. § 2253, appealing this Court's Opinion and Order of Summary Dismissal dated August 11, 2005. “A certificate of appealability may issue under [§ 2253(c)(1)] only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where a district court dismisses a petition on the merits, “[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Upon review of the record, reasonable jurists could not debate whether this Court was correct in its assessment of Plaintiff’s constitutional claims. As this Court stated in its August 11 Order, “[T]o establish an access to the courts violation under [42 U.S.C.] § 1983, a plaintiff must prove that the violation was intentional, not merely negligent.” Plaintiff failed to allege any facts which would show that his inability to use a photocopier was intentional. Furthermore, Plaintiff

failed to plead and prove prejudice stemming from the asserted violation that would have given the Michigan Supreme Court a reason to overturn his conviction. (*See* Opinion and Order of Summary Dismissal, August 11, 2005).

Accordingly, the Court DENIES Plaintiff's Motion for Certificate of Appealability.

SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: September 28, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on September 28, 2005.

s/Jonie Parker
Case Manager